

§ 320.39

the appeal before the hearings officer, may appeal to the Board for review of the decision.

[56 FR 65681, Dec. 18, 1991]

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal, the party in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this chapter in determining if good cause exists.

(Approved by the Office of Management and Budget under control number 3220-0020)

[56 FR 65681, Dec. 18, 1991]

§ 320.40 Procedure before Board on appeal from decision of hearings officer.

Upon the filing of an appeal to the Board from a decision of a hearings officer, the Secretary to the Board shall notify all parties to the decision of the hearings officer that an appeal has been filed. The parties shall not have the right to submit additional evidence, except that:

(a) The Board may permit the submission of additional evidence upon a showing by a party that he or she has

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additional evidence to present which, for valid reasons, he or she was unable to present at an earlier stage;

(b) The Board may request the submission of additional evidence; and

(c) The Board may designate any employee of the Board to take additional evidence and to report his or her findings to the Board. Any such additional evidence shall be submitted in such manner as the Board may indicate and shall be included in the record.

[56 FR 65681, Dec. 18, 1991]

§ 320.41 Procedure before Board after submission of report by hearings officer.

(a) After submission to the Board of a hearings officer's report, in an appeal involving employee status or the creditability of compensation, any party to the proceeding may, within twenty days after the mailing to him of a copy of the report, file with the Board and serve upon other parties by mailing to their last addresses of record such exceptions in writing as he desires to make to the hearings officer's findings of fact and conclusions of law. Each exception shall specifically designate the particular finding of fact or conclusion of law to which exception is taken, and shall set forth in detail the grounds of the exception. General exceptions and exceptions not specifically directed to particular findings of fact or conclusions of law will not be considered. Each party shall have ten days after the receipt of exceptions taken by other parties in which to file with the Board replies to the exceptions. The Board may, upon the application of any party and for cause shown, extend the time for filing and serving of exceptions or filing of replies thereto. The hearings officer's report shall be advisory but shall be presumed to be correct. Findings of fact to which no exceptions are taken will, subject only to the power of the Board to reject or modify, stand confirmed.

(b) Further argument will not be permitted except upon a showing by any party that he has arguments to present which for valid reasons he was unable to present at an earlier stage, and in cases in which the Board requests further elaboration of arguments. In such cases, the further argument shall be

submitted orally or in writing, as the Board may indicate in each case, and shall be subject to such restrictions as to form, subject matter, length, and time as the Board may indicate.

§ 320.42 Decision of Board.

The decision of the Board, whether on an appeal to the Board from a decision of a hearings officer, or after submission of a report by a hearings officer, shall be made upon the basis of the record established in accordance with the foregoing sections. Notice of such decision, together with the Board's findings of fact and conclusions of law in connection therewith, shall, within 15 days from the date on which the decision is made, be mailed to the parties at the latest addresses furnished by them. Subject only to judicial review in accordance with § 320.45, the decision of the Board shall be final and conclusive for all purposes:

(a) With respect to the initial determination involved, and

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involve the same parties and which were based on the same issue or issues determined in the decision of the Board. In a case in which there has been a hearings officer's report, in an appeal involving employee status or the creditability of compensation, the decision of the Board on all issues determined in such decision shall be final and conclusively establish all rights and obligations, arising under the Act, of every party notified as hereinabove provided of his or her right to participate in the proceedings.

[Board Order 66-84, 31 FR 10181, July 28, 1966, as amended at 56 FR 65681, Dec. 18, 1991]

§ 320.45 Judicial review.

Upon being notified of a decision of the Board made (a) upon review, on the Board's own motion, of a decision of a hearings officer, or (b) upon an appeal to the Board, an aggrieved party may obtain judicial review of such final decision, by filing a petition for review within ninety days after the date on which notice of such decision was mailed to him, or within such further time as the Board may allow, in the U.S. Court of Appeals for the circuit in

which the party resides or will have had his principal place of business or principal executive office, or in the U.S. Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia.

[Board Order 58-142, 23 FR 9090, Nov. 22, 1958, as amended at 56 FR 65682, Dec. 18, 1991]

§ 320.48 Representatives of parties.

In the event a party to any proceeding within the Board, under the preceding regulations in this part, desires to be represented by another person, he shall file with the Board prior to the time of such representation a power of attorney signed by him and naming such other person as the person authorized to represent him: *Provided, however,* That without requiring such power of attorney the Board may recognize as the duly authorized representative of the claimant the person designated by the claimant's railway labor organization to act in behalf of members of that organization on such matters whenever such representative acts or appears for such claimant.

§ 320.49 Determination of date of filing.

For purposes of this part the date of filing of any document or form shall be the date of receipt at an office of the Board. By agreement between a base-year employer and the Board any document required to be filed with the Board or any notice required to be sent to the employer may be transmitted by electronic mail.

[56 FR 65682, Dec. 18, 1991]

PART 322—REMUNERATION

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